

**61-2c-105. Scope of chapter -- Exemptions.**

(1) (a) Except as to an individual who will engage in an activity as a mortgage loan originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a dwelling.

(b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.

(2) The following are exempt from this chapter:

(a) the federal government;

(b) a state;

(c) a political subdivision of a state;

(d) an agency of or entity created by a governmental entity described in

Subsections (2)(a) through (c) including:

(i) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act;

(ii) the Federal National Mortgage Corporation;

(iii) the Federal Home Loan Mortgage Corporation;

(iv) the Federal Deposit Insurance Corporation;

(v) the Resolution Trust Corporation;

(vi) the Government National Mortgage Association;

(vii) the Federal Housing Administration;

(viii) the National Credit Union Administration;

(ix) the Farmers Home Administration; and

(x) the United States Department of Veterans Affairs;

(e) a depository institution;

(f) an entity that controls, is controlled by, or is under common control with a depository institution;

(g) an employee or agent of an entity described in Subsections (2)(a) through (f):

(i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and

(ii) including an employee of:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(I) owned and controlled by the depository institution; and

(II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

(C) an institution regulated by the Farm Credit Administration;

(h) except as provided in Subsection (3), a person who:

(i) makes a loan:

(A) secured by an interest in real property;

(B) with the person's own money; and

(C) for the person's own investment; and

(ii) that does not engage in the business of making loans secured by an interest in real property;

(i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:

(i) is the seller of real property; and

(ii) receives the mortgage, deed of trust, or consensual security interest on real

property as security for a separate money obligation;

(j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:

(i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;

(ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and

(iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;

(k) a nonprofit corporation that:

(i) is exempt from paying federal income taxes;

(ii) is certified by the United States Small Business Administration as a small business investment company;

(iii) is organized to promote economic development in this state; and

(iv) has as its primary activity providing financing for business expansion;

(l) except as provided in Subsection (3), a court appointed fiduciary; or

(m) an attorney admitted to practice law in this state:

(i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans when considering the attorney's ordinary practice as a whole for all the attorney's clients; and

(ii) when the attorney engages in loan modification assistance in the course of the attorney's practice as an attorney.

(3) An individual who will engage in an activity as a mortgage loan originator is exempt from this chapter only if the individual is an employee or agent exempt under Subsection (2)(g).

(4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301 when transacting business of residential mortgage loans.

(b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

(i) is not subject to enforcement by the division under Part 4, Enforcement; and

(ii) may be subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.

(c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection (4)(a) or that an attorney subject to this chapter has violated this chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

(5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.

(b) An individual who voluntarily obtains a license pursuant to this Subsection (5) shall comply with all the provisions of this chapter.

Amended by Chapter 212, 2012 General Session